

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

ASSOCIATION FOR INDIVIDUAL DEVELOPMENT¹

Employer

And

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 399

Petitioner

Case 13-RC-20957

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁴

All full-time and regular part-time maintenance technicians employed by the Employer whose principle office is currently located at 309 West New Indian Trail Court, Aurora, Illinois; but excluding all other employees, including clerical employees, technical employees, confidential employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status, as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the

Association for Individual Development
13-RC-20957

commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Union of Operating Engineers, Local 399**.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **April 15, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **April 22, 2003**

DATED April 8, 2003 at Chicago, Illinois.

/s/ Elizabeth Kinney
Regional Director, Region 13

- */ The National Labor Relations Board provides the following rule with respect to the posting of election notices:
- (a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.
 - (b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.
 - (c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

- 1/ The names of the parties appear as amended at the hearing.
- 2/ The arguments advanced by the parties at the hearing and in their briefs have been carefully considered.
- 3/ The Employer is an Illinois corporation engaged in the business of providing rehabilitative services to persons with disabilities.
- 4/ The Petitioner seeks to represent a unit of all full-time skilled maintenance technicians who are employed out of the Employer's Aurora Illinois facility.

I. INTRODUCTION

The Association for Individual Development (the "Employer") operates several types of facilities for people with disabilities, including numerous community-based residential facilities. The parties stipulated that the Employer is a non-acute health care employer. The Petitioner seeks to represent one of the Employer's 61 employee classifications, maintenance employees. The Employer contends that the appropriate unit is a service and maintenance unit, which must include nine additional employee classifications, putting 10 of the Employer's 61 employee classifications consisting of approximately 200 employees at issue herein. There are two somewhat distinct groups of maintenance employees at the Employer. One group performs maintenance tasks at the Employer's facilities in and around Aurora, Illinois. This group includes four employees, three of whom are full-time and one of whom is part-time. The other group consists of two part-time maintenance employees who are assigned to the Employer's facilities in the Elgin Illinois area. The Employer's service employees are responsible for a wide range of duties, from operating and maintaining the Employer's vehicle fleet, to the direct daily care and training of the persons with disabilities who make up the Employer's clientele. The Union has petitioned to represent only the three full-time skilled maintenance technicians who work in the Aurora area.

A. Positions of the Parties

The Employer moves to dismiss the instant Petition on two grounds. First, the Employer claims that its maintenance employees are not "skilled" maintenance technicians. Therefore, the Employer argues that the petitioned-for unit is inappropriate under the Board's test applicable to non-acute health care facilities, and that the only appropriate unit that includes the maintenance employees must include its service employees. Second, the Employer notes that the unit sought by the Union consists of less than five employees and argues that the petition must, therefore, be dismissed because no extraordinary circumstances exist warranting such a small unit.

Conversely, the Union argues that under traditional community of interest standards, a unit of the Employer's full-time Aurora area skilled maintenance employees is an appropriate unit. The Union implicitly argues that the maintenance employees in question are skilled maintenance employees, contrary to the Employer's claim. The Union also asserts that the presumption in favor of a single-location unit warrants excluding the maintenance employees who work in the Elgin area from the unit it seeks.

Although not petitioned-for, the Union makes no specific argument in its brief as to why, at the very least, the part-time Aurora maintenance employee should not be included in a unit with the full-time maintenance employees there. Finally, the Union disputes the Employer's claim that, under Board policy, a unit of less than five employees is an inappropriate unit.

B. Issues Presented and Summary of Decision

The question of the appropriate composition of the unit and the appropriate scope of the unit are presented in this case. The composition issue actually presents two issues. First, whether a unit of only skilled maintenance employees is appropriate, rather than the larger unit of all service employees proposed by the Employer. Second, whether the part-time employees should be excluded from the unit, as urged by the Union. The scope issue is whether a unit of only Aurora based maintenance employees is appropriate.

After careful consideration, I find that a unit composed of only maintenance employees is appropriate. Specifically, regardless of whether they are deemed skilled maintenance employees or not, they share a sufficient community of interest distinct from the other employees to warrant finding them an appropriate unit. I, therefore, reject the Employer's claim that the unit must include all of the Employer's service employees. Likewise, I reject the Employer's assertion that the petition must be dismissed merely because the Union seeks to represent a unit that consists of less than five employees, as its claim is inconsistent with Board law. However, contrary to the Union, I find that there is insufficient evidence to warrant excluding the part-time employees from the unit. Specifically, because the part-time employees perform the same work, under the same basic working conditions, I find that they have a substantial and continuing interest in the wages, hours and working conditions of the full-time employees.

Finally, I find that that a unit of only Aurora area employees is not appropriate, and find instead that the scope of the unit must include all of the Employer's facilities. I, therefore, direct an election among all of the Employer's full-time and regular part-time maintenance employees.

II. FACTS

The Employer operates non-acute health care facilities that provide a variety of services to people with disabilities. In this section, a general description of the Employer's operations will be presented. Next, the maintenance employees' relevant terms and conditions of employment will be discussed. Finally, the evidence regarding the Employer's other service employees will be presented.

A. Overview of the Employer's Operations

The Employer offers services to people with disabilities, including individuals with mental retardation, cerebral palsy, epilepsy, and autism, as well as people with mental health issues, including paranoia and schizophrenia. The range of services offered by the

Employer includes three general types of services: 1) sheltered workshop programs; 2) adult day care; and 3) residential group homes. The sheltered workshop program provides job skills training and supervision to the Employer's clients. The adult day care program works to teach the Employer's clients various daily living skills, such as basic hygiene. The residential group homes house four to six clients and provide daily living services that are tailored to the individual needs of the clients.

The Employer currently operates out of 27 separate locations, and has plans to open three more facilities in the near future. About 23 of these facilities are residential group homes. The Employer's facilities are located primarily in Kane County, Illinois, which includes, among other cities, Aurora and Elgin, Illinois. These two suburban Chicago cities are approximately a one-hour drive apart, according to the testimony of Mike Miller, the Employer's Director of Maintenance and Purchasing. On a map, the two cities are approximately 20 miles apart.

There are various working conditions applicable to all the employees discussed herein. For example, all of the employees are subject to the same employee handbook, which is disseminated to all of the Employer's employees. The Employer's basic fringe benefits are also offered to all of the Employer's employees, with the exception of distinctions based solely on whether the employees are full or part-time. Moreover, all of the Employer's general labor policies apply to all of the employees at issue, as human resource functions for all employees is centralized at the Employer's main office in Aurora. Finally, with the exception of only one sub-classification of employee, the state-certified rehabilitation managers, all of the employees discussed herein are paid by the hour.

B. The Employer's Maintenance Employees

The Employer has a total of six maintenance employees who fall into two somewhat distinct groups. The key distinction is the geographic location of their primary work sites. One group works almost exclusively in the Aurora, Illinois area, while the other group works in Elgin, Illinois. The Aurora-based group consists of three full-time employees and one part-time employee. The Elgin-based group is made up of two part-time employees.

With the exception of their different general work locations and the distinctions based on whether they are full or part-time, the two groups of employees have very similar terms and conditions of employment. Mike Miller, the Employer's Director of Maintenance and Purchasing, supervises all of the maintenance employees. Miller reports to the Employer's chief financial officer who, in turn, reports directly to the Employer's president. In addition to the maintenance employees, Miller also supervises two other employees, the van driver and the driver/vehicle inspector and maintenance planner.

Maintenance employees have particular buildings to which they are regularly assigned within their home area, and they perform the routine maintenance needed at the Employer's facilities. This includes general carpentry, plumbing, HVAC, and electrical

Association for Individual Development
13-RC-20957

work. The carpentry work includes putting up shelves and hanging doors, as well as repairing broken flooring tiles and replacing missing roof shingles. The plumbing work ranges from unclogging drains and replacing washers and p-traps, to replacing larger items, such as toilets and hot water heaters. With respect to HVAC work, the maintenance employees perform such tasks as, replacing igniters, as well as inspecting and troubleshooting heating and air-conditioning problems. Electrical work performed by the maintenance employees includes simple tasks like, changing light bulbs, to somewhat more complex tasks like, replacing electrical switches and outlets.

On occasion, the maintenance employees also perform projects that are more substantial. For example, the maintenance employees recently added a wall to divide one large room into two smaller rooms. In addition, the maintenance employees once re-shingled the roof of one of the Employer's garages. Typically however, larger projects, such as adding an addition onto an existing building or putting a new roof on a building is contracted out, rather than performed by the Employer's maintenance employees.

Although it appears that the maintenance employees currently employed by the Employer are capable of performing a wide variety of tasks, these tasks involve relatively little skill. Accordingly, the Employer does not require any specific level of education for its maintenance employees beyond a high school diploma or its equivalent. Similarly, the required experience for the maintenance employees is minimal, in that as little as one year of work in the maintenance field is sufficient. Thus, although the record demonstrates that some of the current maintenance employees have skills and certifications beyond the Employer's minimal requirements, such as welding certificates, these skills are not a necessary prerequisite for the Employer. In addition, even for the welding certified employees, this skill is rarely used. However, the Employer does administer a basic skills test to its new maintenance employees to ensure that they are capable of performing electrical tasks safely.

The full-time maintenance employees' work on weekdays, from 8:30 a.m. to 4:30 p.m. The part-time employee who works in the Aurora area works 25 hours per weekday, from 8:30 a.m. to 1:30 p.m. The two Elgin employees work 29 and 16 hours per week, respectively, but the exact times that they work is not specified in the record. The full-time maintenance employees earn approximately \$13 per hour, and the part-time maintenance employees earn about \$11.50 per hour.

Only the full-time maintenance employees also work on an on-call basis. When a maintenance employee is on-call, he may be paged regarding potential emergency maintenance issues after the maintenance employees' normal work hours. The on-call schedule rotates among the three full-time employees, and each employee is on-call for a week at a time, starting on Wednesday. Any hours worked pursuant to such an emergency call are paid at a rate of one and a half times the employee's regular hourly rate.

Work assignments for the maintenance employees can be generated in four different ways. First, Miller makes out a weekly schedule for the employees that denote which

facility each employee will work at each day. This schedule may include reminders regarding specific tasks that are to be performed at the assigned locations. Second, each facility maintains a maintenance logbook where authorized personnel make specific maintenance requests. Third, the staff at the various locations may make oral requests for certain maintenance work while the maintenance staff is on site to do other work. Although apparently discouraged by Miller, it appears that these ad hoc requests occur with relative frequency, although no witness testified as to the approximate rate of this type of occurrence. Fourth, the full-time staff may be receiving work as a result of their on-call duties. However, when the on-call maintenance employee is paged, he has the discretion to determine whether the issue that prompted the call requires immediate attention or whether it can wait until regular work hours. In addition, the on-call maintenance employee can decide to call another maintenance employee to assist in an after-hours assignment. However, the on-call employee may also elect to call Miller and request his opinion regarding the proper course of action under the circumstances.

There are some distinctions between the maintenance employees, based on the maintenance employees' work locations. Due to the distance between the locations, Miller conducts separate employee meetings for the two groups. However, in both cases, no other employees of the Employer attend these maintenance meetings. The frequency of these meetings also varies based on the employees' work location. Thus, Miller conducts a meeting with his Aurora maintenance employees every Wednesday, whereas he only conducts one monthly meeting with his two Elgin maintenance employees.

There is no interchange among the Elgin and Aurora maintenance employees, except in extraordinary circumstances. Indeed, Miller could only recall one instance in his three-year tenure at his current position where he sent an Aurora employee to perform work in Elgin and this occurred more than a year ago. In addition, when this incident occurred, the Aurora-based employee did not work alongside the Elgin employees, but rather was merely directed to perform work at one of the Employer's Elgin facilities, without assistance from the Elgin employees.

There is no evidence regarding how the maintenance employee's time is recorded, either by time clock or other means. In addition, whether the maintenance employees wear a uniform specific to them is likewise not in evidence. Where the maintenance employees take breaks, including lunch breaks, is also not part of the record.

B. The Employer's Other Service Employees

The Employer has nine other employee classifications that it asserts are service employees that must be included in a unit with the maintenance employees. These employees fall into two categories based on their placement in the Employer's overall organizational structure. First, there are the employees who, like the maintenance employees, are supervised by Miller. This group, which is part of the Finance division, includes the driver/vehicle inspector maintenance planner and the van driver. Second, there are the employees who the Employer groups within its division titled Programs and Services. This group includes a total of seven classifications: 1) truck drivers; 2)

inventory controllers;ⁱ 3) house managers; 4) direct support persons; 5) direct support floaters; 6) jan-aid program supervisors; and 7) rehabilitation managers.

1. The Finance Division Employees

In addition to the maintenance employees, Miller also supervises the driver/vehicle inspector and maintenance planner (the “D/V”) and the van driver. The Employer employs one D/V who is responsible for monitoring the Employer’s fleet of around 40 vehicles to ensure that they receive timely service and maintenance. Although the D/V has an office at the Employer’s main location in Aurora, this individual spends significant time away from his office, since the D/V is required to perform monthly on-site inspections of all the vehicles. The D/V also handles emergency repairs for the vehicles. The D/V works from 8:00 a.m. to 4:00 p.m. and has no on-call duties. The D/V’s hourly wage rate is \$12.03.

The Employer’s van driver is responsible for transporting clients from the Yorkville facility to the Thompson Center in Aurora, transporting clients to and from work placement locations or transportation centers, and delivering inter-facility mail within the Aurora area. In addition, the van driver is expected to assist the D/V, if necessary. The van driver works from 7:15 a.m. to 4:45 p.m. The exact hourly wage rate for this position is not in evidence, however, it appears from the record that the van driver is paid between about \$9 per hour and approximately \$10.50 per hour.

There is no evidence of any interaction or interchange between the maintenance employees and the D/V and the van driver. Indeed, Miller conducts meetings with only the D/V and the van drivers, rather than with all of the employees he supervises. Thus, there is no evidence that the maintenance employees ever interact with the D/V or the van driver during the course of their work.

2. The Programs and Services Employees

The Employer’s service employees who fall within the Employer’s Programs and Services division can be separated according to the primary duties they perform. First, there are two classifications that work primarily with the products and materials used and/or produced by the Employer’s clients in the sheltered workshop settings. These employees are the truck drivers and the inventory controllers. Second, there are several Programs and Services division employees who primarily provide direct care or supervision to the Employer’s clients. This includes the house managers, the direct support persons and direct support floaters, the jan-aid program supervisors, and finally, the rehabilitation managers.

ⁱ Although the title truck driver does not appear on the Employer’s organization chart submitted during the hearing, the inventory control position is listed under the Programs and Services division. Therefore, because the production coordinator supervises both positions, it seems logical to presume that, although not listed, truck drivers fall within the Programs and Services area.

Both of the positions that work with the materials and products involved in the workshops, the truck drivers and the inventory controllers, are supervised by the production coordinator. Of the two truck drivers, one works in the Aurora area and the other works in the Elgin area. However, both drivers perform essentially the same task: transporting goods between the Employer's sheltered work programs and the area businesses for whom the Employer has contracted to do work. These drivers may also, if needed, do some loading and unloading of the trucks using a pallet jack. Both positions were full-time, and used to work from 8:30 a.m. to 4:30 p.m., however, it is unclear if this is still the case. The exact hourly wage rate for the truck drivers is unclear from the record. However, it appears that they earn between about \$9 per hour and approximately \$10.50 per hour.

The inventory controllers' work in the Employer's two warehouses, one of which is in Aurora and the other is in Elgin. The inventory controllers are responsible for the overall coordination of their respective warehouses. This includes receiving and placing incoming stock and coordinating outgoing shipments. Although it is not clear how frequently this occurs, the inventory controllers may also have some responsibility for supervising the Employer's clients, through a warehouse-training program. Thus, like the remaining Program Service employees, the inventory controller may have some regular interaction with the Employer's clients. One of the inventory controllers earns \$10.15 per hour and the other earns \$12.75 per hour.

The final group of service employees who are part of the Programs and Service division are those whose primary duties are more focused on direct care and supervision of the Employer's clients. This group includes the house managers, the direct support persons and direct support floaters, the jan-aid program supervisors, and finally the rehabilitation managers.

House managers are responsible for the direct care and training of the Employer's clients. In addition, house managers are responsible for general oversight of the residential facilities, including basic maintenance and housekeeping. The house managers sleep on-site, and are responsible for the care of the residents at the facility, including assisting them with daily hygiene, meals, and ensuring that the residents attend their daily programs. House managers' work alternating Sunday to Wednesday schedules. Residential coordinators supervise the house managers. The residential coordinators apparently report through a division director to the Employer's senior vice president for Programs and Services. The house managers earn between \$14.42 per hour to \$11.63 per hour and are therefore at the higher end of the range for the Employer's hourly employees.

Direct support persons are responsible for the implementation of the clients individual plan goals. There are two general types of direct support persons, those who work at the residential group homes, and those that work at the day programs offered by the Employer. At the residential facilities, the direct support persons work in three daily shifts, from 8:00 a.m. to 4:00 p.m., 4:00 p.m. to Midnight, and Midnight to 8:00 a.m. The

Association for Individual Development
13-RC-20957

day program direct support persons, on the other hand, work only during the day, from either 8:00 or 8:30 a.m. to 4:00 or 4:30 p.m.

The direct support person floaters, as the name suggests, are not assigned to a specific location, but rather float, on an as needed basis within an assigned group of the Employer's facilities. According to their position descriptions, all direct support persons, including the floaters, are supervised by residential coordinators. Like the house managers, it appears that the residential coordinators ultimately report to the Employer's senior vice president for programs and services. Direct support persons earn between \$13.74 per hour to \$7.63 per hour.

The jan-aid program supervisor is a lead worker who trains and works as a member of a crew of the Employer's clients. These crews are assigned to clean various locations, including facilities owned by the Employer, as well as outside organizations. The jan-aid program supervisor typically works after hour's shifts, such as one that begins at about 4:00 pm and ends at about Midnight, or beginnings at 5:00 or 6:00 a.m. and goes to 8:00 a.m. This position is supervised by the jan-aid coordinator but it is unclear what their hourly rates are.

The rehabilitation manager position includes two sub-classifications. The distinction between the two groups relates to their qualifications, as one group is certified by the state as Qualified Mental Retardation Professionals ("QMRPs") and the other is not. Only the QMRPs must have a bachelor's degree. Hence, there are rehabilitation managers who are QMRPs and the remaining rehabilitation managers are termed "non-degreed". However, the Employer requires its non-degreed rehabilitation managers to have 4 years of paid, full-time experience in a related field in order to be considered qualified for the position. It should be noted though, that although only vaguely implied by the Employer at the hearing, and not discussed at all in its brief, it appears that the Employer argues that only the non-degreed rehabilitation managers should be included in its proposed unit of all service employees.

Regardless of their QMRP/degree status, the rehabilitation managers are responsible for developing comprehensive service plans for individual clients of the Employer. This involves being a member of an inter-disciplinary team, including the client's family, other health care specialists, and individuals or groups that work with the clients. This team works together to achieve each client's maximum independence. This includes individually tailored work and living skills and includes goal setting. The rehabilitation managers work in the day programs, of which the Employer has a total of three, two in Aurora and one in Elgin. Finally, although not discussed in detail, and possibly not relevant, if, in fact, the Employer does not propose to include the QMRP rehabilitation managers in the unit, the only apparent distinction between the two groups is that the QMRPs must provide oversight and supervision to the non-degreed employees.

As for supervision, program coordinators supervise the rehabilitation managers. As noted above, the QMRP rehabilitation managers are the only employees discussed at the hearing that are not paid by the hour. However, there is no evidence regarding their

salary range. The non-degreed rehabilitation managers, on the other hand, have a wage rate between about \$12.00 and \$14.00 per hour.

With the exception of the rehabilitation managers, the educational requirement established by the Employer for the service employees discussed in this section are minimal and only varies slightly among most of the positions. Thus, a high school education or its equivalent is sufficient for the house managers, direct support persons and floaters, driver/vehicle inspector and maintenance planner, and the inventory controllers. For the jan-aid program supervisor, a high school education may be substituted by either eight years of full-time janitorial service experience or four years of experience with people with disabilities, or some combination thereof. Finally, for the van driver and the truck drivers, a high school diploma or its equivalent is merely “preferred”.

There is minimal, if any, daily interaction between the maintenance employees and the above service employees. Specifically, it appears that the only contact occurs when the maintenance employees are performing work at the locations where these service employees work. At that, the contact with, for example, the house managers and the direct support persons, can best be characterized as sporadic, with no evidence of anything more than occasional limited contact. The maintenance employees, therefore, do not work in an integrated work setting with these service employees. They do not attend common meetings, only occasionally, if ever, work in the same location, and there is no evidence that they share a common lunch or other break room facility. Likewise, there is no evidence of any interchange among any of the above service employees and the maintenance employees.

III. ANALYSIS

The Board's procedure for determining an appropriate unit under the Act is to first examine the petitioned-for unit, here, the Aurora area full-time maintenance employees. If that unit is appropriate, the inquiry ends. If the petitioned-for unit is not appropriate, an examination of the alternative units suggested by the parties must be undertaken. However, the Board has the discretion to select an appropriate unit that is different from those suggested by the parties. See, e.g., *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). In making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine an appropriate unit. *P.J. Dick Contracting*, 290 NLRB 150 (1988). Moreover, the Board generally attempts to select a unit that is the “smallest appropriate unit” encompassing the petitioned-for employees. See, e.g., *R & D Trucking*, 327 NLRB 531 (1999).

In *Park Manor*, 305 NLRB 872, 875 (1991), the Board held that the test for determining the appropriateness of bargaining units in non-acute care health care institutions must include not only traditional community of interest factors, but also “background information gathered during rulemaking and prior precedent.” Therefore, the evidence presented during rulemaking with respect to units in acute care hospitals, as well as prior

cases involving similar types of unit sought in similar types of health care facilities, must be examined.

With respect to unit composition, I find that the much broader unit consisting of all service employeesⁱⁱ urged by the Employer is unwarranted, given, among other things, the lack of sufficient community of interest factors weighing in favor of such a unit. Thus, I find that even assuming, arguendo, that the maintenance employees at issue do not qualify as skilled maintenance employees; a unit of only maintenance employees is appropriate. However, I find that a unit of only the full-time maintenance employees is not appropriate because there is insufficient evidence to warrant excluding the part-time employees given their clear connections to the unit. As to the scope of the unit, I find that limiting the unit to only the Aurora area maintenance employees is not appropriate. Finally, I reject the Employer's claim that because the petitioned-for unit consists of five or fewer employees the petition must be dismissed.

I. Composition of the Unit – Application of the Board's Test Involving Non-Acute Health Care Institutions

A. Community of Interest Factors

In *Park Manor*, supra at 875, the Board recited the relevant community of interest factors. They include, "similarity of wages and hours, extent of common supervision, frequency of contact with other employees, and area practice and patterns of bargaining." *Id.* Other matters deemed relevant to the Board's traditional community of interest analysis include degree of skill and common functions, interchange with other employees, and functional integration. *Ore-Ida Foods*, 313 NLRB 1016 (1994), aff'd. 66 F.3d 328 (7th Cir. 1995). Based on these factors, I find that the maintenance employees share a community of interest that is sufficiently distinct from other employees that they constitute an appropriate unit under the Act.

Several of the above factors can be disposed of quickly, given the evidence presented herein. With respect to interchange with other employees, the record demonstrates that the maintenance employees do not interchange with any of the other employees. Similarly, there is no evidence regarding the area practice and patterns of bargaining. The evidence with respect to the other factors will, on the other hand, be discussed more fully below.

The maintenance employees have somewhat similar wages and hours to the service employees proposed by the Employer. The maintenance employees are, however, at the higher end of the wage spectrum. The range of hourly rates for all of the Employer's hourly employees ranges from \$7.63 per hour to \$14.42 per hour. The three full-time maintenance employees, however, are in the top 10% of this range, earning between

ⁱⁱ It bears mentioning that while the Employer claims that its maintenance employees must be included with its service employees in order for the unit to be appropriate, it is not clear from Employer's Exhibit 3 that all of the service employees are included in the unit proposed by the Employer.

\$13.00 and \$13.87 per hour. Likewise, while some of the service employees have similar day shifts, some do not. For example, the house managers work 24-hour shifts and sleep at the Employer's residential facilities while on duty. Significantly, however, only the full-time maintenance employees carry pagers and rotate their on-call duties. Thus, the maintenance employees are the only employees with an interest in on-call issues.

With respect to common supervision, the maintenance employees and the majority of the service employees do not share common supervision. Rather, Mike Miller, the maintenance employees' supervisor only supervises two of the other service employees, the driver/vehicle inspector and maintenance planner, and the van driver. Indeed, Miller and the eight employees that report to him are not even included within the same general division, the Program and Services division, as the other service employees. Thus, with the exception of these two employees, and the fact that all employees at the Employer ultimately report to the Employer's President, there is no common supervision among the unit proposed by the Employer. In contrast, the other service employees report to various coordinators within the Programs and Services division. For example, both the house managers and the direct support persons report to the residential coordinator, while the jan-aid supervisor reports to the jan-aid coordinator.

The frequency of contact between the maintenance employees and the remaining service employees is minimal, at best. Indeed, with respect to some of the classifications at issue, there is no evidence whatsoever to suggest that the maintenance employees ever encounter the other employees during the course of their work. What contact does occur, is limited to brief encounters where other employees may, at times, identify potential maintenance issues. However, the maintenance employees do not perform work with the assistance of other employees. Thus, there is no evidence of functional integration between the maintenance employees and the other service employees.

A review of the degree of skill and common functions demonstrates that, while the education level required by the Employer is minimal for all the positions at issue, the maintenance employees have few, if any, common skills or functions with the other service employees. The maintenance employees must be able to perform a variety of basic maintenance tasks. This includes an initial evaluation to ensure that they can safely perform certain electrical work. On the other hand, the majority of the service employees at issue are responsible for the direct care or supervision of the Employer's clients. Indeed, even the inventory control employees must work with clients who are assigned to the warehouse, and the van driver must have daily contact with the clients he or she transports. Thus, the other service employees must have the skills and abilities necessary to care for and/or work effectively with people with disabilities, rather than the ability to hang shelves and replace toilets and other fixtures like the maintenance employees. In addition, many of the service positions must be trained in administering medications, CPR, and universal infectious disease precautions, while the maintenance employees are not required to be so trained.

Based on the foregoing, I find that the maintenance employees share a distinct community-of-interest that is separate from that of the other employees.

B. Rulemaking Issues

The Employer cites the evidence considered by the Board during its rulemaking proceedings as warranting a finding that the maintenance employees herein are not skilled maintenance employees. On balance, I tend to agree. However, several of the characteristics noted by the Board when it concluded that a separate unit of skill maintenance employees in acute care settings is appropriate, are nonetheless present here. Specifically, the Board noted factors typically related to skilled maintenance employees regarding supervision, wages, hours, working conditions, and interaction with other employees that resembles the maintenance employees at issue here.

During rulemaking the Board noted that skilled maintenance employees have supervision that is separate from other employees. 54 Fed.Reg 16341-42, reprinted at 284 NLRB 1515, 1557 (1987). Here, the same is true. Rather than being supervised by departmental supervisors from the facilities where they work, the maintenance employees here are supervised by Miller. Moreover, the division to which maintenance employees are assigned in the Employer's organizational structure is separate from nearly all of the other service employees.

The Board also noted the generally higher wages paid to skilled maintenance employees as compared to other employees. *Id.* As discussed above, the maintenance employees are in the upper level in terms of the Employer's wages rates when compared to the other hourly employees. Likewise, as with the skilled maintenance employees discussed by the Board, the maintenance employees here have limited contacts with other employees, which consist primarily of other employees identifying the maintenance problem. *Id.* at 1558. Thus, while it is true that the maintenance employees here do not possess the training typically seen in skilled maintenance employees, and they tend to perform more routine tasks, they are not completely unlike the skilled maintenance employees found by the Board to appropriately make up a separate unit in acute care facilities.

C. Prior Precedent

As part of its argument that the petition must be dismissed because it does not include the service employees, the Employer cites several cases involving employers that bare little resemblance to it. These cited cases can be divided into two general categories, those involving nursing homes and those involving large hospitals. I find that the Employer's reliance on these cases is misplaced, given, among other things, the distinction between the types of institutions involved in those cases. Indeed, the Employer has cited no case involving an employer with one or more main facility that also involves numerous communities based residential care facilities, such as it operates.

I have uncovered no cases, and none have been cited to me, concerning the Board's view on the appropriateness of bargaining units involving maintenance employees where the employer involved operated non-acute health care facilities similar to the Employer's.

Thus, while I find the cases cited by the Employer to be somewhat instructive, they are not particularly persuasive.

With respect to the nursing home cases cited by the Employer, although they are somewhat similar to the Employer, there are major differences as well. Most significantly, all of these cases involve single location nursing homes. Unlike these cases, however, the Employer here is not merely a nursing home. Rather, the Employer operates over 25 separate facilities that offer a wide range of services, rather than specializing in offering traditional nursing home care. Thus, unlike the cited cases, the Employer does not have the level of functional integration and contact among the employees that existed at those facilities.

In addition, in one of the cases cited by the Employer, the Board found that a unit of only maintenance employees in a nursing home was an appropriate unit. While the Employer correctly notes that the case, *Hebrew Home & Hospital, Inc.*, 311 NLRB 1400 (1993), is somewhat distinguishable, there are also similarities between the maintenance employees there and those at issue here. While some of the maintenance employees in *Hebrew Home & Hospital* were licensed and, therefore, more closely resembled skilled maintenance employees, the majority of them were unskilled and performed more routine maintenance tasks, like the maintenance employees here. *Id.* Similarly, the maintenance employees in *Hebrew Home & Hospital* were distinguished from employees who perform unskilled janitorial-type work, much like the maintenance employees here. *Id.* at 1402. In addition, the interaction between the maintenance employees in *Hebrew Home & Hospital* strongly resembles the interaction between the maintenance employees and other employees herein. *Id.* Thus, it is not unprecedented to find that maintenance employees possess a sufficiently separate community of interest from other employees to warrant a separate unit for them.

Two hospital cases cited by the Employer involve acute care facilities and are of limited value to analyzing the instant matter. In addition, like the nursing home cases discussed above, there is no evidence to suggest that either employer in those cases involved anything other than traditional single-location hospital facilities. The *Mount Airy Psychiatric Center*, 217 NLRB 802 (1975) case involved an apparent single facility psychiatric hospital, and the other hospital case cited by the Employer, *St. Francis Hospital*, 286 NLRB 1305 (1987), involved a large hospital, with no evidence of residential group homes like the ones at issue here.

In addition, *St. Francis Hospital* cited by the Employer is distinguishable in three other significant respects as well. First, the *St. Francis* case issued in the interim period between the start of the health care rulemaking proceedings and the Board's final health care rules. Thus, the Board applied the then-existing analysis, the so-called "disparity-of-interest" test, rather than the more complete test applicable here.

Second, and perhaps more importantly, various significant factual differences exist between the maintenance employees in *St. Francis* and the maintenance employees here. The *St. Francis* maintenance employees were assigned to four different departments and

therefore had different supervision. *Id.* at 1306. Here, all the maintenance employees are in the same department, with the same supervisor. In addition, in *St. Francis*, the Board noted the “significant and frequent” contact between the maintenance employees and, in particular, the hospital’s other service employees. *Id.* As discussed above, that is not the case here. Finally, unlike in *St. Francis*, there have been no transfers between the service and maintenance employees. *Id.* at 1307. Third, and most significantly, in its rulemaking proceedings, the Board specifically noted that based on the evidence obtained during the rulemaking hearings, it was unlikely they would reach the same result as the Board had in that case. 284 NLRB 1515, 1561. Accordingly, the Employer’s reliance on *St. Francis* is misplaced.

D. Status of the Part-Time Maintenance Employees

Finally, with respect to the inclusion of the part-time employees in the unit, I find that they must be included. It is well settled that part-time employees are generally included with full-time employees whenever the part-time employees perform work within the unit on a regular basis for a sufficient period of time to demonstrate that they have a substantial and continuing interest in the wages, hours, and working conditions of the full-time employees in the unit. *Fleming Foods*, 313 NLRB 948 (1994). The record plainly demonstrates that the three part-time employees work regular weekly schedules under otherwise nearly identical working conditions as the full-time maintenance employees. The only real distinction is that the part-time employees do not perform on-call duties. I find that, without more, this fact is insufficient to warrant excluding the part-time maintenance employees from the unit.

II. Scope of the Unit – The Aurora and Elgin Area Employees

The Union argues that the unit it seeks is a single facility unit and it is, therefore, the Employer’s obligation to rebut the presumption in favor of its appropriateness. However, an employer-wide unit is also presumptively appropriate. *Greenhorne & O'Mara, Inc.*, 326 NLRB 514 (1998). Moreover, given the array of Employer locations where the maintenance employees actually work, even within the general area sought by the Union, it is hardly a traditional single facility unit.

Regardless of any presumption, however, I find that when examined in light of the relevant criteria for determining the scope of bargaining units, the Elgin employees must be included with the Aurora maintenance employees. In making determinations involving multi-location employers, the Board considers such factors as central control over daily operations and labor relations, including the extent of local autonomy; degree of employee interchange; similarity of skills, functions, and working conditions; and bargaining history, if any. *J & L Plate, Inc.*, 310 NLRB 429 (1993).

Daily operations and labor relations for the Elgin and Aurora employees are clearly centralized. Miller supervises all of the employees, and all of the Employer’s labor relations are performed out of the Employer’s main office in Aurora. Although the Elgin and Aurora employees do not meet with Miller together, and there is no evidence of

interchange, the remaining factors all support finding them to appropriately be included in one unit.

All of the maintenance employees possess the same skills, receive similar training, perform identical functions, and have the same working conditions, albeit in a different area. However, I note that not even the Aurora area maintenance employees have the exact same working conditions insofar as each of them is assigned to separate buildings within their general area. Thus, the mere fact that they work at different buildings does not support finding that the Elgin employees must be excluded. Likewise, all of the maintenance employees have other similar terms and conditions of employment, including the benefits they are eligible for, and the process by which they perform their jobs.

I find, therefore, in contrast to the Union's claim, that the mere fact that the maintenance employees work in different cities and have separate meetings with Miller, does not overcome the foregoing factors. The only other criteria argued by the Union to warrant their exclusion is the fact that they are part-time employees who, therefore, do not have the exact same benefits. However, this is a function of their part-time status, not that the same benefits are not available to them.

III. Units of Five or Fewer Employees

Inasmuch as the unit I have found appropriate consists of six employees, I find the Employer's argument that units of five or fewer employees are inappropriate in non-acute health care facilities to be inapplicable to the situation herein. However, it is also the opinion of the undersigned, contrary to the Employer's position that the mere fact that a non-acute health care unit consists of fewer than five employees does not, in and of itself, render the unit inappropriate. On the one hand, the Employer correctly quotes the Board's view with respect to units of five or fewer employees in acute care facilities. Specifically, the Board noted that such a unit constitutes an extraordinary circumstance, warranting a case-by-case determination. 54 Fed.Reg 16341-42, reprinted at 284 NLRB 1580, 1588. From there, however, the Employer makes the argument that five or fewer person units are not appropriate, absent extraordinary circumstances. Such a claim clearly misconstrues the Board's holding.

As noted above, an extraordinary circumstance is required in order to allow deviations from the units established in the health care rule. Thus, for example, if in an acute health care facility, application of the rule rendered a unit of five or fewer employees, it is deemed an extraordinary circumstance that triggers a case-by-case analysis. This of course, is contrary to the rulemaking decision, which sought to eliminate the need for such individual determinations.

As discussed above, however, the analysis for determining the appropriate unit in non-acute care settings always requires a case-by-case analysis, under the empirical community of interest test. Thus, the extraordinary circumstances exception to the Board's rules regarding acute care facilities is irrelevant in this matter. In addition, and

Association for Individual Development

13-RC-20957

perhaps more perplexing, the Employer asserts that I must find that an extraordinary circumstance exists in order to find that a unit of five or fewer employees is appropriate. However, the Board determined that a unit of five or fewer is, in and of itself, an extraordinary circumstance, not, as the Employer claims, that an extraordinary circumstance is needed in such a case. Finally, I note that the unit I find appropriate here consists of six employees, thus, even if this rule somehow applied as the Employer asserts, it is irrelevant for this reason as well. Thus, I find that the Employer's argument on this issue is without merit.

CONCLUSION

For the foregoing reasons, I find that a unit of all full-time and regular part time maintenance employees employed by the Employer is an appropriate unit and direct an election therein.

The unit consists of six employees.

460-5067-4200

470-5000

470-5800

470-5820

470-8533

CATS-UntOS